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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 KENNETH TALBOTT SR.,

12 Petitioner,

13 v.

14 C. KOENIG,

15 Respondent.

Case No. CV 19-00925-VAP (RAO)

**ORDER VACATING JULY 5, 2019
ORDER AND JUDGMENT;
REOPENING CASE; AND
ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

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17 On May 29, 2019, the Magistrate Judge issued a Report and Recommendation
18 (“Report”) recommending dismissal of this action. Dkt. No. 11. Objections to the
19 Report were due on June 18, 2019. Dkt. No. 10. No Objections were received by
20 the June 18, 2019 deadline. On July 5, 2019, the Court accepted the Report,
21 dismissed the action, and entered judgment. Dkt. Nos. 12-13.

22 On July 29, 2019, the Court received a letter from Petitioner with his
23 Objections. Dkt. Nos. 15-16. Petitioner states that he turned over his Objections to
24 prison authorities on June 12, 2019, and he observed a prison officer sealing it and
25 placing it in the mail bag for outgoing legal mail. Dkt. No. 15 at 1-2. When Petitioner
26 received the Court’s July 5, 2019 dismissal order, he confronted the prison officer,
27 who repeated that she did mail the Objections out as observed by Petitioner. *Id.* at 1-
28 2. Petitioner provides the Court with a document labeled “TriFacility Outgoing Legal

1 Mail,” which appears to show that a piece of mail was sent by Petitioner to the U.S.
2 District Court in Los Angeles on June 13, 2019. Dkt. No. 16.

3 The Court will construe Petitioner’s letters as a request for relief from
4 judgment under Federal Rule of Civil Procedure 60(b) (“Rule 60(b)”).

5 Rule 60(b) provides for relief from judgment upon a showing of: (1) mistake,
6 inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by
7 due diligence could not have been discovered before the court’s decision; (3) fraud
8 by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied;
9 or (6) any other reason justifying relief. *See Fed. R. Civ. P. 60(b).*

10 The Court finds that Petitioner has established entitlement to relief from the
11 July 5, 2019 order accepting the Report and the judgment dismissing this action so
12 that the Court may consider the Objections. Petitioner states that he attempted to file
13 his Objections on June 13, 2019 by turning over the Objections to a prison official.
14 Dkt. No. 15. This would have been prior to the June 18, 2019 deadline to file
15 Objections. *See* Dkt. No. 10. Petitioner declares that he watched prison officials seal
16 the envelope containing his Objections and place it in the mailing bag. Dkt. No. 15.
17 Petitioner also attaches a document that appears to show that Petitioner did send a
18 piece of mail to the Court on June 13, 2019. Dkt. No. 16. However, no filing was
19 received by this Court after June 13, 2019 until the instant request. Thus, it appears
20 that Petitioner is not at fault for his Objections failing to reach the Court prior to the
21 July 5, 2019 judgment. Petitioner filed the instant Rule 60(b) request within a
22 reasonable time, as judgment was entered less than a month before Petitioner filed
23 his request. These facts present adequate grounds to reopen the action for the purpose
24 of considering Petitioner’s Objections to the Report.

25 Accordingly, the action is REOPENED for the purpose of considering
26 Petitioner’s Objections to the Report.

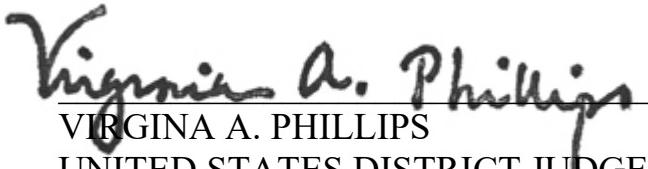
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28 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the

1 records and files herein, and the Report. The Court has further engaged in a *de novo*
2 review of those portions of the Report to which Petitioner has objected. The Court
3 hereby accepts and adopts the findings, conclusions, and recommendations of the
4 Magistrate Judge.

5 IT IS ORDERED that that the Petition is denied, and Judgment shall be entered
6 dismissing this action with prejudice.

7 DATED: August 6, 2019_

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9 VIRGINIA A. PHILLIPS

10 UNITED STATES DISTRICT JUDGE

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